



2013 Computer Crimes Advisory Committee Report

Legislative Members: Delegate Ken Plum (chair), Senator Janet Howell,
Delegate Michael Webert

- ◆ In addition to the legislative members, the Advisory Committee was comprised of 13 individuals appointed by JCOTS, representing the State Police, local Commonwealth's Attorneys, defense attorneys, private sector technology entities such as Facebook and Yahoo!, and other interested parties.
- ◆ The Advisory Committee's primary task during the 2013 Interim was the review and study of two issues referred to JCOTS by the 2013 Session of the General Assembly:
 - HB 2050 (Webert)/SB 1030 (Reeves) regarding search and seizure of computers; and
 - SB 1173 (Obenshain) regarding computer trespass.
- ◆ The Advisory Committee held two meetings, with robust discussions regarding both of the issues referred to the committee for review. The Advisory Committee recommends amended versions of each bill to JCOTS for consideration, as set forth below.

Search & Seizure Legislation

- ◆ HB 2050/SB 1030 were introduced in 2013 at the request of the State Police. Issues have arisen where a computer might be seized in one jurisdiction, but the contents of the computer are actually examined in another jurisdiction -- the State Police has three computer labs in the state where computers are examined. Some courts have required the police to obtain a separate warrant for the examination of the computer when it takes place in a jurisdiction other than where it was seized. Other courts have allowed the search in another jurisdiction, but have required that the examination be
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down within 15 days (the time to execute the warrant). A consistent approach is needed across the state.

- ◆ The committee generally agreed that analysis of computer contents is no different than other analyses conducted by police on seized items -- such as sending off blood to a lab for analysis.
- ◆ The bill as introduced was specific to computers and computer networks. The committee agreed that because all analyses should be treated the same --- regardless of whether or not it involves a computer -- the bill should refer generally to the examination of items seized.
- ◆ The draft also clarifies that the examination may be conducted at any time after the execution of the warrant, so long as probable cause continues to exist.
- ◆ The draft was recommended unanimously to JCOTS by the Advisory Committee.

Computer Trespass Legislation

- ◆ SB 1173 was introduced at the request of the Office of the Attorney General. The bill would amend the standard used to establish the crime of computer trespass so that certain actions would be a crime if done "without authority." Current law would require a prosecutor to prove that those same acts were done "with malicious intent" to establish the crime.
 - ◆ A representative from the Office of the Attorney General said that the bill was requested because the "malicious intent" standard is too difficult to prove, and essentially renders the statute ineffective.
 - ◆ The existing "malicious intent" standard was the recommendation of a lengthy and in-depth study conducted by JCOTS and the Virginia State Crime Commission related to computer crimes generally.
 - ◆ Concerns were raised that changing the standard to "without authority" might have unintended consequences, as a crime could be
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committed accidentally. For instance, an employee may not have authority to open a particular document, but may do so accidentally. If the employee inadvertently made any changes to that document (such as accidentally deleting a word), he would have technically committed computer trespass under the proposed standard.

- ◆ The committee attempted to identify a standard that would fall between "without authority" and "malicious intent." The committee considered two other standards -- "knowingly and without authority" and "intentionally deceptive means and without authority." There was not unanimous agreement as to which standard to apply, but a majority of the members recommended the "intentionally deceptive means" standard.
 - ◆ "Intentionally deceptive means" is only used one other place in the Code, and that is in a law that just went into effect on July 1, 2013 regarding the use of tracking devices to track individuals without their consent. Opponents to this standard were concerned that it is not an established legal standard.
 - ◆ Additional changes were made to ensure that the criminal impact statement would not reflect additional incarceration costs due to the changes.
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